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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 RUSSELL HENNING, ET AL.,

5 Plaintiffs,

6 v.

07 CV 0312 (GBD)

7 CELESTICA, INC., ET AL.,

8 Defendants.
-----x

9 New York, N.Y.
10 July 28, 2015
11 10:00 a.m.

12 Before:

13 HON. GEORGE B. DANIELS

14 District Judge

15 APPEARANCES

16 LABATON SUCHAROW LLP
17 Attorneys for Plaintiffs
18 BY: NICOLE ZEISS

19 BLEICHMAR FONTI TOUNTAS & AULD LLP
20 Attorneys for Plaintiffs
21 BY: JOSEPH A. FONTI

22 KAYE SCHOLER
23 Attorneys for Defendants
24 BY: PHILLIP A. GERACI

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1 (In open court; case called)

2 MS. ZEISSL: Nicole Zeiss from Labaton Sucharow on
3 behalf of the class and class representatives. Good morning,
4 your Honor.

5 MR. FONTI: Good morning, your Honor. Joseph Fonti
6 from Bleichmar Fonti Tountas & Auld of counsel to the class.

7 THE COURT: Good morning.

8 MR. GERACI: Good morning, your Honor. Phil Geraci of
9 Kaye Scholer for the defendants.

10 THE COURT: We're here for final approval of the
11 settlement. Just turn to the parties and you can let me know
12 what the status is. I received an objection from Jeff Brown.
13 I believe that's the only objection that I'm aware of that was
14 received. Why don't you tell me what the status is at this
15 point.

16 MS. ZEISSL: Yes, your Honor. Nicole Zeiss from
17 Labaton.

18 I can address the approval motion and Mr. Fonti will
19 be addressing the fee motion.

20 We're very pleased to be here today to present the
21 final approval of a proposed settlement of this securities
22 class action for 30 million. The settlement represents a very
23 favorable recovery of between 11 percent and 24 percent. It
24 has the strong support of the class representatives who
25 collectively purchased about fifteen thousand shares. We've

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1 had a very excellent reaction by the class overall. We hired
2 one of the preeminent claims administrators in this industry to
3 disseminate notice. They have disseminated about 65,000 copies
4 of the notice. We received only three opt-outs, one of which
5 was valid. All were submitted by individuals. The valid opt
6 out request was a thousand shares.

7 We've only received the one objection by Mr. Brown,
8 who is an attorney, and also appears to be a serial objector
9 who has objected in about seven other cases. We were able to
10 successfully subpoena -- well effect service of a subpoena for
11 records on Mr. Brown. He has not presented any information
12 indicating that he's a class member, even though he's an
13 attorney and Garden City Group did receive his name from a
14 broker. So we know that he does have a source for trading
15 records. We submit that he has no standing to pursue his
16 objection. And, in fact, in three of his other objections he
17 also did not have standing.

18 THE COURT: Did you send notice out to him?

19 MS. ZEISS: Yes. He received notice.

20 THE COURT: And on what basis did he receive notice if
21 he has no standing?

22 MS. ZEISS: Brokers are asked to search for investors.
23 But some of their customers might have just held during the
24 class period. They didn't necessarily purchase. And the fact
25 that he hasn't been able to produce those records despite ample

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1 opportunity and access to a broker we think indicates that he
2 likely does not have standing.

3 THE COURT: Well, do you have any information either
4 consistent or inconsistent with that? Obviously he's someone
5 that you sent notice to on the presumption that he had an
6 interest in this case. So what information do you have about
7 whether or not he was, in fact, a purchaser?

8 MS. ZEISS: We don't have trading records for class
9 members. All we know is that his broker located his name and
10 address as somebody who may have purchased or held during the
11 class period. But we don't have access to people's trading
12 records.

13 Celestica did not produce his name as part of their
14 transfer file. So they don't have him as an owner of record.

15 THE COURT: You said you sought this information from
16 him.

17 MS. ZEISS: Yes, your Honor. We subpoenaed the
18 information from him. We were able to finally serve him. And
19 he has not responded.

20 THE COURT: He didn't respond at all to the subpoena?

21 MS. ZEISS: A call -- he did not provide any records.
22 A colleague called me and indicated that they did receive the
23 subpoena and that they were looking but they have not produced
24 anything.

25 THE COURT: Have you had any further conversation or

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1 correspondence with Mr. Brown?

2 MS. ZEISSL: No. Absolutely none, Your Honor.

3 THE COURT: All right.

4 MS. ZEISSL: I have some more information to put the
5 opt-outs in context if you would like.

6 THE COURT: Sure.

7 MS. ZEISSL: So we received the three opt-outs. Only
8 one is valid. A thousand shares. Celestica, at the end of the
9 class period, had about 200 million shares outstanding. And
10 our expert estimated that potentially a hundred million shares
11 are damaged. So the fact that only a thousand shares by an
12 individual opted out we think is very significant.

13 Our expert also estimated that institutional investors
14 owned about 80 percent of the damaged shares. So the fact that
15 no institution or pension fund came forward to object or opt
16 out we also submit is significant.

17 I have some updated claim information for you.

18 THE COURT: Sure.

19 MS. ZEISSL: So, we are very early in the process. The
20 claims deadline is two months away. Garden City Group's
21 experience is the vast majority of claimants file right before
22 the deadline or at the deadline.

23 They overall estimate that they may receive between
24 6500 claims and 13,000. To date they've received 500 claims.
25 About 50 of them are from institutions. 450 are from

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1 individuals. The total shares claims so far is about a
2 million. So we're still a ways away from our estimate of a
3 hundred million damaged share.

4 The average number of shares purchased per claim is
5 about 2,000 shares. Our largest claim is by an institutional
6 investor and they held shares -- they purchased shares of
7 300,000 shares. So a very significant claimant has come
8 forward, and we expect that that will increase significantly by
9 the end of the claims period.

10 THE COURT: All right.

11 MS. ZEISSL: With respect to the substance of
12 Mr. Brown's objection. I just want to make it clear that he
13 hasn't objected to the recovery or anything of substance with
14 respect to the settlement. He has not objected to the plan of
15 allocation. He has not objected to the request for expenses.
16 He has a few quibbles with some side issues with respect to the
17 settlement that I can go through. And Mr. Fonti can address
18 any -- you know, the fee objections. But he's cited absolutely
19 no authority for any of his points.

20 So I can walk the court through those although they
21 are all laid out in the papers.

22 THE COURT: Why don't you just summarize it for the
23 record.

24 MS. ZEISSL: Sort of a laundry list with respect to the
25 class -- I'm sorry, the settlement. No claims oversight. The

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1 timelines and deadlines favor defendants and class counsel.

2 There is no explanation of what any of this means. The claims
3 process is burdensome.

4 This is exactly the claims process that is used
5 uniformly in securities class actions. The court has
6 continuing oversight over the case and remains to have
7 jurisdiction over class counsel and the claims administrator.
8 We will come forward at the end of the claims process and file
9 a motion for approval of a distribution. Your Honor will need
10 to approve all of the distributions before they're made. So
11 there is significant oversight of the process.

12 He mentions something about the SIPRI entity. At the
13 end of the claims process, after we've made multiple
14 distributions, if there is an amount that's unclaimed by class
15 members, the standard practice is to make a donation to a SIPRI
16 entity. His objection is that the funds should be used to
17 benefit certain class members. Well, the whole point of SIPRI
18 is that you have unclaimed money. And it's not economically
19 feasible to distribute to class members. But what will happen
20 here is that if we get to that point we will ask your Honor to
21 approve SIPRI recipients so the court will have oversight of
22 that.

23 And I believe that's it as to these settlement issues
24 that he raises.

25 THE COURT: And Mr. Fonti did you want to -- I'm sorry

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1 Mr. Johnson.

2 MS. ZEISS: Mr. Fonti.

3 THE COURT: Sorry.

4 MR. FONTI: Mr. Fonti, yes.

5 THE COURT: Mr. Fonti, did you want to address the
6 issue of the fees and expenses?

7 MR. FONTI: Yes, your Honor. Thank you very much.
8 I'll begin by saying it's, after eight years of litigation,
9 it's good to be here before the court presenting this
10 settlement and resolution; that we're extremely pleased. As
11 Ms. Zeiss articulated, the class appears to be very content
12 with the exception of one objection.

13 The request has three components. It has one for
14 reimbursement of expenses; one for reimbursement of
15 out-of-pocket costs and lost wages of the lead plaintiff, the
16 New Orleans Retirement System; and the third component is the
17 award of attorneys' fees to class counsel.

18 As to the first and second component, the
19 reimbursement of expenses. They were completely advanced by
20 class counsel, the attorneys in this case, over an eight-year
21 history of the case. There is no objection.

22 In our papers we presented to the court the particular
23 breakdown of those expenses. As we indicated in the papers,
24 about 60 percent of the expenses go toward expert fees.

25 As your Honor knows, this case went up to, just weeks

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1 before trial, through summary judgment, expert discovery. It
2 was a very technical, complex case around a high tech industry
3 that Celestica was in. And the use of experts was essential,
4 both from the proof standard as well as meeting our obligations
5 at summary judgment and certainly at trial.

6 If the court would like, I could go into more detail.
7 We believe the papers present a fair amount of information
8 around the reasonableness of those fees and expenses -- I'm
9 sorry, the expenses and without -- and they are met without
10 objection by anyone.

11 THE COURT: Go ahead.

12 MR. FONTI: The second component, your Honor, is the
13 reimbursement of expenses and lost wages provided for under the
14 Private Securities Reform Act, the PSLRA, for a payment of
15 roughly \$3,645 to the New Orleans Retirement System which was
16 active lead plaintiff. The court is well familiar with the
17 provision of the PSLRA that provides for the reimbursement of
18 expenses and lost wages to a lead plaintiff, statutorily
19 provided. Your Honor has awarded in the past, the court has
20 awarded in the past such reimbursements to lead plaintiffs;
21 indeed, in Winstar awarded a reimbursement of roughly \$60,000.
22 Here the amount at issue is far smaller. It's about \$3600, as
23 articulated in the papers. This is for any out-of-pocket
24 expense, if any, and the time that the New Orleans Retirement
25 System put in to overseeing the case over the course of eight

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1 years, being part of class discovery as well as being part of
2 the settlement process and the time commitment put into the
3 matter. And that request is also met without any objection.

4 Barring any questions from the Court, I'll move on to
5 the fee which is, in fact, met with an objection. I'll
6 articulate the grounds for the fee.

7 THE COURT: Yes.

8 MR. FONTI: The fee request that's made today, your
9 Honor, is for 30 percent of the common fund that will be
10 created as a result of the settlement. This fee request is
11 consistent with what the Court has done in prior securities
12 litigations. Not only your Honor has ruled and granted such
13 fee requests but courts within this district, within the Second
14 Circuit and nationally, have awarded fees in line with what is
15 being requested here today.

16 The fee request could be looked through and assessed
17 reasonableness through a variety of lenses. I think most
18 important and most authoritative is that set forth by the
19 Second Circuit in the Goldberg case where the Second Circuit
20 said that a percentage fee is an appropriate award, using a
21 percentage of the common funds is an appropriate measure of
22 awarding fees. And, in fact, the trend in this circuit and the
23 trend even nationally has been toward percentage fee awards.
24 In the Goldberg case, the court set forth a number of elements
25 to be assessed in looking at the reasonableness of the fee.

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1 We've set that forth in the papers and I'll summarize for your
2 Honor and for the record what those elements are.

3 The first is the time and labor expended. As the
4 court is fully familiar, this case began in 2007. And over the
5 intervening years over 28,000 hours of attorney time have been
6 dedicated by class counsel and the other lawyers working in the
7 case. That is a very significant number of hours, obviously.
8 But one fact remains, that nearly 70 percent of that effort was
9 a dedication of eight specific attorneys. We believe that
10 reflects the efficiency, the persistence, bringing to bear the
11 institutional knowledge of the case where a small group of
12 attorneys dedicated a very substantial amount of their time and
13 resources towards the prosecution of this case over a very long
14 period of time. If we were to tabulate what the -- essentially
15 what the bill would be for that time over the years at market
16 rates, the total value of that time is roughly \$14.3 million.

17 Those are very high level quantifications of the time
18 and labor expended. But as the Court is fully familiar, this
19 is a case that began without any criminal investigations or
20 parallel government actions or parallel litigation. This is
21 the only case in which the class will recover for the alleged
22 wrongdoings here. Class counsel had no roadmap, had no benefit
23 of other proceedings in developing this case. So through the
24 course of fact discovery -- through the course of the
25 investigation, the development of the allegations, as your

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1 Honor knows, this was not a simple case to get past the motion
2 to dismiss. In fact, we had to take a trip to the Second
3 Circuit on very complicated issues and the application of what
4 was then a very new Supreme Court case, the Tellabs decision,
5 and back down to your Honor for discovery, all the way through
6 summary judgment and, as I said weeks before trial, including
7 19 fact depositions, five expert depositions and a very full
8 record in a hotly contested litigation.

9 The second category of factors under Goldberg is the
10 risk of the litigation. The settlement that I've just
11 presented bears on the risk of the litigation without having
12 the benefit of other proceedings to look at. This was a case
13 in which liability was far from certain. And, in fact, we
14 didn't prevail the first time on the motion to dismiss and our
15 articulation of what the case was about but developed the case
16 through discovery. And your Honor undertook a very detailed
17 analysis of the record that had been developed by counsel here
18 at summary judgment, denying in full the multiprong attack that
19 defendants made at that juncture, moving on I believe nine or
20 so grounds for summary judgment on every element of the claim.

21 That's not to say that being able to prove our claims
22 at trial was anything but a sure thing. It was a very highly
23 complicated case dealing with accounting issues, internal
24 controls, a complex, high-tech industry. So the risk of
25 proving liability at trial was very significant and something

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1 we took very seriously.

2 Over the course of the case we, in fact, bore
3 significant legal risks. The Supreme Court, over those eight
4 years, assessed and took under certiorari a number of very
5 significant cases that would have very much -- could have, if
6 defendants prevailed in those cases, upended the securities law
7 regime as we knew it at the time the case was brought. The
8 most recent decision was that in Halliburton II which was a
9 case that decided whether or not the front of the market, which
10 was a presumption, would continue forward. Had plaintiffs in
11 that case lost, this case would have been excruciatingly
12 difficult to prove as a class and would have certainly altered
13 the economic value of it. Those are risks that we, as
14 plaintiffs' counsel, fully took on, continuing to advance all
15 of the costs and putting our time in without certainty of
16 compensation. We also, of course, could have resolved the case
17 at an earlier juncture in view of those risks for a far less
18 amount rather than establishing and proving the case through
19 the juncture at which it was settled.

20 The risk of loss causation and damages is a
21 substantial risk, and your Honor ruled on some of those
22 elements of loss causation at summary judgment; meaning, simply
23 that we could put on trial the expert evidence around the
24 corrective statements here, those five corrective dates, which
25 we needed to prove in whole to establish our damages theories.

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1 And even under a best case scenario, the damages analysis
2 rendered damages to the class of somewhere between 125 million,
3 based on certain assumptions, up to about 272 million under a
4 best case scenario. As we articulate in the Johnson
5 declaration at paragraph 108, damages very easily could have
6 been at trial somewhere in the neighborhood of \$40 million.
7 And certainly defendants' estimate of damages was that there
8 were none, that the false statements alleged here were not
9 material; that they were amply forewarned; that there was no
10 fraudulent attempt, even to the extent there was a mistake made
11 it was not fraudulent in nature and that we bore the burden of
12 proving it. So in view of the risk that either we would lose
13 on the merits and have zero damages or that our theories of
14 liability damages would not pan out, we bore significant risk.

15 As Ms. Zeiss articulated, this is a contingent case.
16 That is the reason for the percentage fee request. And we, as
17 your Honor knows, have not been paid a penny over the eight
18 years of prosecuting this.

19 The Goldberg case also looks at the magnitude and
20 complexity of the case. And I think I articulated many of the
21 factors it that weigh in favor of the fee with respect to
22 magnitude, complexity and the nature of the accounting and the
23 internal control issues and the technical issues of the
24 company. And, again, that is -- those are issues we had to
25 navigate solely without the benefit of any other proceeding out

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1 there.

2 The quality of representation is something that the
3 Goldberg case points to. Your Honor is familiar with the
4 practice that we have brought to bear here and the
5 professionalism that we have attempted to prosecute this case
6 and present it to the court, and I believe it speaks for
7 itself. But one point worth making is the persistence with
8 which we pursued this case. Given all of the risks and points
9 of inflection over the eight years, this case could have been
10 resolved at an earlier juncture for certainly less. But we
11 persisted through to the end.

12 And the final Goldberg factor is the public policy
13 interest. It's articulated in our papers. The Supreme Court,
14 again, in the Halliburton II decision reemphasized the
15 importance of the securities class actions and the role of
16 private lawyers to bring such cases when government entities
17 either don't have the resources or the governmental interest in
18 pursuing them.

19 The second lens through which the court can assess the
20 case and the fee request is what is called the lodestar
21 crosscheck. I intimated earlier that if you took the 28,130
22 hours billed in this case that would amount to \$14.3 million.
23 The Second Circuit has acknowledged in the Wal-Mart case back
24 in 2005 that, in fact, a multiple of the lodestar is reasonable
25 under certain circumstances and that a multiple as high as five

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1 under certain circumstances can be appropriate.

2 Here, however, we're not asking not only for a
3 multiple, we're asking for a fee that represents a discount
4 over the time expended. We are seeking a 30 percent fee, which
5 represents only 63 percent of the value of the time we've put
6 into this case. We think that's an appropriate fee. It's one
7 that has been negotiated with the institutional lead plaintiffs
8 here. That's a third lens through which the court can assess
9 the fee, that two institutional plaintiffs who are fiduciaries
10 not only to the class, as class representatives, but
11 fiduciaries to their own beneficiaries as pension systems,
12 oversaw this case, familiar with what lead counsel, class
13 counsel have done here, the effort undertaken, the risks
14 surmounted, and have authorized us to seek a 30 percent fee.

15 I think the final lens through which the court may
16 assess the fee is through what your Honor has done in other
17 cases as well as other district courts in this district, in
18 this circuit as well as nationally. Certainly a fee of
19 30 percent is in line with what your Honor has awarded in cases
20 like Perry, and Dewey Dolan, Provo, and Winstar. Those are
21 some recent decisions. But Judge McMahon recently awarded such
22 a fee in the Aeropostale case, and other Second Circuit
23 district courts have awarded fees of 30 percent, in fact, in
24 settlements much larger than this one, including Merck-Medco,
25 the Amaranth case, the Priceline case. And we've summarized

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1 those cases from pages 5 through 8 of our brief, fully cites
2 those cases and articulates them.

3 So I'd like to move on, your Honor, to the objection,
4 addressing the objection.

5 THE COURT: Yes.

6 MR. FONTI: As Ms. Zeiss articulated, after having
7 sent out 65,000 plus notice packets, we have one objection from
8 Mr. Brown. And Ms. Zeiss has touched on the standing and the
9 serial objector elements of the objection. But we know your
10 Honor, at least address the objection, and rule on it today.
11 And he takes issue with the fee and so I'll address those
12 objections.

13 The objection is very similar to the one that your
14 Honor ruled on in the Sanofi litigation and, in fact, as it
15 relates to the fee, there are almost verbatim parallels.

16 He says in point three of his objection that no fees
17 should be withheld to assure oversight of the settlement. That
18 overlaps with what Ms. Zeiss articulated that your Honor has,
19 the court has oversight of this settlement. It is routinely
20 the case that class counsel is awarded fees and continues its
21 oversight which is not only required by the court's order but
22 is customary practice.

23 The Labaton firm, which is the court-appointed class
24 counsel, has overseen the administration of literally billions
25 of dollars in class settlements and has an ungarnished track

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1 record in doing so and doing so promptly. And your Honor
2 ultimately will have jurisdiction over the final distribution
3 of the settlement.

4 On top of that, we have not been paid at all. And so
5 this is the appropriate juncture at which class counsel should
6 be awarded its fees and rest assured that class counsel will
7 oversee and promptly resolve the distribution process.

8 Points four and six of his objections, which also
9 touch on fees, speak to the concern that fees should not be
10 awarded because the amount to be paid to the class is
11 uncertain. That is just simply wrong. It seems to be a
12 vestige of what Mr. Brown may view as what we call a
13 claims-made settlement; in other words, you reach a settlement
14 with defendants, depending on the volume of claims that come
15 in, defendants will pay to the class on a claims-made basis.

16 Here, that's not the case. We have a common fund that
17 was created. Defendants are paying to the class \$30 million.
18 The class will receive a pro rata proportion of that amount
19 minus fees and expenses. So we know the finding first of what
20 the class will recover. And so those particular objections are
21 without merit on the basis that we know what the class will
22 recover.

23 Point seven. Mr. Brown says that the fee is not
24 reasonable absent documentation of the actual fee, in other
25 words, access to our billing records. Certainly the court --

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1 it's in the court's prerogative to access those records if it
2 should. But the entire premise of the Goldberg decision is
3 that a percentage fee is a more appropriate, efficient way for
4 the court to address a fee award. It is not in, in our view
5 and the view of other courts that the decide these kinds of fee
6 applications, in the interest of the judiciary to wade into the
7 records.

8 He also says in point nine that a fee percentage is a
9 disproportionate percentage. He says that categorically. He
10 does not explain the reasoning of why a 30 percent fee is
11 disproportionate. He doesn't do anything to distinguish the
12 elements of Goldberg that we've just gone through and why, for
13 some reason, we have not satisfied the Goldberg standard. He
14 does nothing to distinguish this case from other cases that
15 your Honor and other district court judges have awarded such
16 fees. And he does nothing to say that the process by which
17 lead plaintiffs negotiated these fees somehow doesn't warrant
18 the award.

19 His final point is touched on in his sixth objection.
20 And he says, "Fees must be limited to the lodestar
21 calculation." I think we let that one speak for itself in that
22 we're not seeking the lodestar in this case. We're seeking a
23 discount. We're seeking 63 percent of the lodestar. Had we
24 been asking for the lodestar billed in this case, our billable
25 time, it would reflect a fee of 48 percent, and we're just

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1 simply not asking for that. So I think your Honor can take for
2 what it's worth in terms of what that objection states.

3 We ask respectfully that the court overrule the
4 objection on the grounds that Ms. Zeiss articulated, the
5 standing, failure to provide proof as well as the merits set
6 forth here. We respectfully ask your Honor enter an order
7 approving the settlement and the order approving the award of
8 attorneys' expenses, lead plaintiffs' expenses, and the award
9 of attorneys' fees.

10 Thank you, your Honor.

11 THE COURT: Tell me more specifically with regard to
12 particularly the proposed order, paragraph three of the
13 proposed order on attorneys' fees and expenses. You discuss
14 the alternative -- well, you discuss interest applicable to
15 both the fees and to the expenses. How do you intend to handle
16 that? What do you anticipate those to be?

17 MR. FONTI: The funds, after your Honor ordered
18 preliminary approval, \$30 million are put into escrow. Those
19 funds were then used to buy Treasury securities that accrue
20 interest. The class and -- has been accruing interest since
21 that point in time. This simply requests that to the point in
22 time when we withdraw our fees we get our percentage of
23 interest, the same as the class will get on its proceeds, and
24 that interest will continue to build until the class is
25 distributed.

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1 THE COURT: For that time period that the funds are
2 accumulating interest?

3 MR. FONTI: Correct.

4 THE COURT: Not from the beginning?

5 MR. FONTI: This is not prejudgment interest. This is
6 just the interest accumulated in the account while it was
7 sitting in the Treasury.

8 THE COURT: My understanding of what you're proposing
9 is that either you get the specific amount plus interest that
10 is laid out in paragraph three or a flat 30 percent of the
11 total settlement fee which would cover both attorneys' fees and
12 interest.

13 MR. FONTI: Right, your Honor. I think this is sort
14 of belts and suspenders. The 9 million is 30 percent. So
15 we're asking for a fee of 30 percent or \$9 million plus
16 interest and separately expenses. I think we just worded it
17 in, as I said, a belts and suspenders kind of way, but it's the
18 same dollar amount.

19 THE COURT: I thought 10 million was 30 percent.

20 MR. FONTI: The settlement is 30 million and
21 30 percent of that would be nine. Expenses would be on top of
22 that. One million -- the 1,392,450 are out-of-pocket expenses
23 which are in addition to the fee.

24 THE COURT: I understand. So it's 9 million plus the
25 1.3 in expenses?

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1 MR. FONTI: Correct, your Honor.

2 THE COURT: That's why I didn't understand the
3 parenthetical. The parenthetical says or 30 percent of the
4 settlement fund which includes interest.

5 MR. FONTI: I think, your Honor, that is surplusage
6 and I think we could -- we intended to mean the same thing, but
7 to articulate it both as a dollar amount and as a percentage.
8 If the court were to strike out the parenthetical, the effect
9 would be the same. I see the potential for confusion.

10 THE COURT: So 30 percent of the settlement fund plus
11 interest; not 30 percent of the settlement fund which in
12 itself --

13 MR. FONTI: Correct.

14 THE COURT: -- includes the interest.

15 MR. FONTI: I think -- maybe Ms. Zeiss might have a
16 different articulation that's clearer than mine.

17 MS. ZEISS: I will try.

18 THE COURT: That's the way I read it.

19 MS. ZEISS: The settlement amount -- pursuant to the
20 settlement agreement, the settlement amount is 30 million. The
21 settlement fund is 30 million plus interest. So it's just a
22 different way of capturing the 30 million plus interest.

23 THE COURT: Well the 90 plus interest is more money
24 than 30 percent of the settlement fund, which includes
25 interest.

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1 MS. ZEISSL: Right. 30 percent of the settlement fund,
2 there is no extra interest. Settlement fund already includes
3 interest. We can just strike that.

4 MR. FONTI: It's been sitting in the bank. So it's
5 accruing interest. And that settlement fund is what it is
6 today. We could strike the parenthetical.

7 THE COURT: No. I understand. 30 percent of the
8 settlement fund. So you're saying 9 percent of the -- you're
9 saying 9 million is 30 percent of the amount of money that was
10 deposited into the settlement fund.

11 MS. ZEISSL: Yes.

12 THE COURT: And then it has subsequently accrued
13 interest.

14 MR. FONTI: Correct.

15 THE COURT: The parenthetical is 30 percent of what's
16 in the settlement fund.

17 MS. ZEISSL: Right.

18 THE COURT: As of the time of the paying of the fee,
19 which would be what was deposited in the settlement fund plus
20 what interest had accumulated during that period of time.

21 MS. ZEISSL: Right.

22 MR. FONTI: Yes, your Honor.

23 THE COURT: Okay. That's fine. That I understand.

24 Let me just see.

25 Mr. Geraci, did you want to add anything at this

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1 point?

2 MR. GERACI: No, your Honor. The defendants are
3 obviously satisfied with the settlement or we wouldn't have
4 agreed to it.

5 THE COURT: Then I've reviewed the papers and I have
6 also considered the objections.

7 I'm going to overrule the objections. I find in
8 substance the objections are not valid objections to the nature
9 of the settlement and I can really characterize them as general
10 boilerplate objections without anything real specific with
11 regard to why this particular settlement is somehow unfair to
12 the class and the class members. Also, it's not been
13 established that Mr. Brown is technically in a position to
14 object having not demonstrated that he is, in fact, a class
15 member. But even if that issue is overcome, I find that his
16 objections on their substance lack merit.

17 I find that the settlement is fair and reasonable,
18 adequate for the class.

19 I find that the attorneys' fees are also reasonable in
20 this case given the factors to be considered, lodestar and the
21 other factors to be considered with regard to the nature of the
22 fees.

23 So, therefore, I'm prepared to order final approval of
24 the settlement into a final -- the proposed final order and
25 judgment.

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1 I'm prepared to order approval of the plan of
2 allocation and sign the proposed order with regard to that and
3 also approve the award of attorneys' fees and expenses as
4 articulated and will sign the proposed order with regard to
5 attorneys' fees and expenses.

6 I will obviously maintain jurisdiction over this case
7 with regard to distribution and final payment in this case but
8 otherwise I will close the case in the active docket and reopen
9 it as necessary with regard to substantive filings or any
10 issues that arise with regard to distribution in this case.

11 Is there anything else that plaintiffs --

12 MS. ZEISS: No, your Honor.

13 MR. FONTI: No, your Honor.

14 THE COURT: Anything else from defense?

15 MR. GERACI: No, your Honor. It's been a long road.
16 Eight-and-a-half years. It's always been a pleasure appearing
17 before you and we appreciate everything the court has done for
18 us.

19 THE COURT: Sure. I hope to see you again sometime.

20 I will have it on the docket today.

21 (Adjourned)